

Lars T. Fuller (No. 141270)
Sam Taherian (No.170953)
THE FULLER LAW FIRM, P.C.
60 No. Keeble Ave.
San Jose, CA 95126
Telephone: (408)295-5595
Facsimile: (408) 295-9852

Attorney for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:

MARJAN MONIQUE BAKER

Debtor

Case No.: 18-50134-MEH

**MOTION FOR ORDER AUTHORIZING
SALE OF REAL PROPERTY ON 3182
KIRK RD, SAN JOSE, CA**

CHAPTER 13

Date: March 29, 2018

Time: 9:30 a.m.

Court: 280 South First Street, San Jose, CA
95113, Room 3020

Comes now Marjan Monique Baker Debtor herein by and through The Fuller Law Firm, P.C.,
her attorneys of record, and hereby move the Court for an order authorizing sale of real property other
than in the ordinary course of business as follows:

1. Debtor commenced Case No. 18-50134-MEH by filing a voluntary petition under
Chapter 13 in the United States Bankruptcy Court for the Northern District of California, San Jose
Division, on January 22, 2018

2. Debtors' plan has not been confirmed.

3. The assets of Debtor include her interest in real property located on 3182 Kirk Road,
San Jose, CA 95124 [hereinafter "Property"] Debtor jointly owns the Property with her estranged

Husband Kevin L. Baker. The Assessor's Parcel Number is 447-06-006. The Property is described as follows:

Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Lot 230, as shown upon that certain map entitled, "Tract No. 1095 Hacienda Gardens Unit No.2," which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 10, 1953 in Book 41 of Maps at pages 42 and 43

Excepting therefrom the underground water or rights thereto, with no rights of surface entry, as quitclaimed to San Jose Water Works, a California Corporation, by Instrument recorded in Book 2600 of Official Records, Page 323

4. On or about October 2, 2014 Kevin L. Baker and Debtor executed a deed of trust ("1st Trust Deed" hereinafter) in favor of Interbank Mortgage Company recorded against the Property on October 9, 2014 as Document No. 22737340 in the Official Records of Santa Clara County. On information and belief, together with the execution of the 1st Trust Deed, Kevin Baker also executed a promissory note ("1st Note" hereinafter) securing an obligation of \$417,000.

5. Debtor is informed and believes that the 1st Note and the 1st Trust Deed are now owned or serviced by Mr. Cooper.

6. Debtor estimated that the balance of the 1st Note was approximately \$393,018.18 as of the time of the filing of the petition.

7. On or about January 23, 2007, Kevin L. Baker and Debtor executed a deed of trust ("2nd Trust Deed" hereinafter) in favor of JPMorgan Chase Bank, N.A. recorded against the Property on January 26, 2007 as Document No. 19279585 in the Official Records of Santa Clara County. On information and belief, together with the execution of the 2nd Trust Deed, Kevin L. Baker also executed a note ("2nd Note" hereinafter) securing an obligation of \$157,250.

8. Debtor estimated that the balance of the 2nd Note and the 2nd Trust Deed was \$132,324.39 as of the time of the filing of the petition.

9. Debtor listed the Property for sale with Realty One Group Infinity which has procured Premier Properties and Financial, Inc. ready, willing and able to purchase the Property. The buyer in

the herein transaction is un-related to the Realtor and is un-related to the sellers. Because of misunderstand and miscommunication, terms of the purchase agreement were not agreed upon. The parties attended a mediation, which led to resolution of disputes and claims through executing a Settlement Agreement and Mutual General Release. Among other things, the parties agreed that the purchase price is determined at \$725,000 and sellers shall receive \$60,000 from its broker and/or its insurance.

10. Escrow has been opened with Chicago Title Company located at 634 N. Santa Cruz Ave Suite 100, Los Gatos, CA 95030. The Escrow number is FWPS-3021170822. The Escrow Officer is Stephanie Evans. Her phone number is (408) 354-7670 and her mail address is Stephanie.Evans@ctt.com.

11. Debtor/seller' agent is Steven Luethje with Realty One Group Infinity. His address is 910 E. Hamilton Ave, Ste 100, Campbell, CA 95008. His phone number is (408) 669-3207. The anticipated commission for Steven Luethje is \$0 pursuant to the Settlement Agreement and Mutual General Release.

12. Buyer' agent is Joseph Koch with Fireside Realty. His address is 7111 Lincoln Ave, San Jose, CA 95125. His phone number is (408) 849-9444 and his email address is joekochrealtor@hotmail.com. The anticipated commission for Joseph Koch is \$14,500.

The Closing Cost is set forth as follows:

Contract sale price		\$725,000
County Taxes		<u>\$4202.91</u>
Commissions Selling Agent	\$14,500	
Title & Courier Fees	\$45	
Title Escrow Fee	\$1365	
Title Owner's ins.	\$1977	
San Jose City Transfer Tax	\$1196.25	
Santa Clara County Transfer Tax	\$797.5	
Payoff to 1 st Mortgage to Mr. Cooper	\$393,018.18	
Additional Interest	\$1052.48	
Other cost	\$220.39	

Payoff of 2 nd Mortgage Chase	\$132,324.39	
Interest & Recording fee	\$1465.13	
Other closing costs	<u>\$11605.82</u>	
Total	\$559,567.14	\$729,202.91
Balance due to seller	\$169,635.77	

13. The closing costs are set forth with more particularity in the attachment to the Declarations filed concurrently herewith.

14. Accordingly, Debtor is expecting to receive half the proceeds of sale and \$30,000 from her broker and/or insurance.

15. The Fuller Law Firm, P.C., Debtor' attorney in the herein case shall apply for fees for services rendered in this case through a fee application. The Fuller Law Firm, P.C. requests that its fees of \$6,861 (total amount of \$8,861 less retainer of \$2,000) be directed to and held by the Trustee from escrow until the Order Granting Application for Attorney Compensation be entered.

WHEREFORE, Debtor respectfully requests that this Court: (1) authorize the sale of the Property to Premier Properties and Financial, Inc. for \$725,000; (2) Allow disbursement of costs as set forth in the Seller's Estimated Settlement Statement inclusive of the payoff to Mr. Cooper and JPMorgan Chase Bank, N.A. in full ; (3) that closing costs be allowed as set forth in the motion; (4) that the demand, if any of Devin Derham-Burk, the Chapter 13 Trustee be satisfied; and (5) that as condition of sale Chicago Title Company shall satisfy the demand of Devin Derham-Burk, Chapter 13 Trustee. If the Chapter 13 Trustee does not intend to submit a demand, she shall notify the escrow agent in writing per her demand, Devin Derham-Burk, Chapter 13 trustee shall be the disbursing agent on all proofs of claim relating to this case with the Clerk's Office of the United States Bankruptcy Court. The trustee shall take her statutory fees on disbursement made by her in connection with this transaction whether or not this transaction closes prior to confirmation of the plan; (6) authorize the Trustee to hold the funds of 6,861 until the Order Granting Application for Attorney Compensation is entered and at which time, disperse

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1 the funds to The Fuller Law Firm, P.C. and (7) for such other and further relief as may be just.

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3 Respectfully submitted,

4 Dated: February 21, 2018

5 THE FULLER LAW FIRM, P.C.

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7 By: /s/ Joyce K. Lau
8 JOYCE K. LAU
9 Attorney for Debtor
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